



ORDINANCE 521

AN ORDINANCE REQUIRING THE REGISTRATION AND PAYMENT OF FEES FOR VACANT PROPERTIES

Sponsored by: **The Mayor and Council**

First and Second Reading: **July 08, 2010** **Council Meeting:**
Results:

Third and Final Reading: **August 12, 2010** **Council Meeting**
Results:

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WHEREAS, properties that are vacant contribute to the decrease in value of surrounding properties and undermine the aesthetic character of the Town; and

WHEREAS, the registration of vacant properties along with fees corresponding to the fiscal impact and duration of the vacancy of the property, will discourage property owners from allowing their properties to remain vacant and in a state of disrepair; and

WHEREAS, the Mayor and Council wish to amend the Code of the Town of Elsmere in order to address vacant properties.

NOW THEREFORE BE IT ORDAINED BY THE COUNCIL OF THE TOWN OF ELSMERE AS FOLLOWS:

That a new section be added to the Code of the Town of Elsmere to be entitled "Registration and Fees for Vacant Properties" to read as follows:

1. Annual registration of vacant buildings and registration fees:

(a) Purpose:

The purpose of this section requiring the registration of all vacant buildings, dwellings and structures, and the payment of registration fees is to assist the Town, and particularly the Code Enforcement Department in protecting the public health, safety and welfare, to monitor the number of vacant buildings in the Town, to assess the effects of the condition of those buildings on nearby businesses and the neighborhoods in which they are located, particularly in light of fire safety hazards and unlawful, temporary occupancy by transients, including illicit drug users and traffickers, and to require of the owners of such vacant buildings their registration and the payment of related fees, and to promote substantial efforts to rehabilitate such vacant buildings. The provisions of this section are applicable to the owners of such vacant buildings as set forth herein and are in addition to and not in lieu of any and all other applicable provisions of the Code of the Town of Elsmere, the health, sanitation, building and property codes, and any other applicable provisions of the State of Delaware.

2. Definitions:

- (a) Definitions. For purposes of this section, the following words and phrases shall have the meanings respectively ascribed to them as follows:
1. **Boarded:** A building or structure subject to the provisions of this section shall be deemed to be "boarded" if in place of one or more exterior doors, other than a storm door, or of one or more windows, there is a sheet or sheets of plywood or similar material covering the space for such door or window.
 2. **Exterior maintenance and major systems:** The phrase "exterior maintenance and major systems" shall mean the safe and lawful maintenance of the facade, windows, doors, roof, and other parts of the exterior of the building and the maintenance of its major systems consisting of the roof, the electrical and plumbing systems, the water supply system, the sewer system, the sidewalk and drive- way, if any.
 3. **Occupied:** Any building or structure shall be deemed to be occupied if one or more persons actually conducts a lawful business or resides in all or any part of the building as the licensed business-occupant, or as the legal or equitable owner/occupant(s) or tenant(s) on a permanent, non-transient basis, or any combination of the same, the regular receipt of delivery of regular mail through the U.S. Postal Service; proof of continual telephone, electric, gas, heating, water and sewer services; a valid Town business license, or the most recent, federal, state, or income tax statements indicating that the subject property is the official business or residence address of the person or business claiming occupancy; or proof of a pre-rental inspection.
 4. **Open:** A building or structure subject to the provisions of this section shall be deemed to be "open" if any one or more exterior doors other than a storm door is broken, open and / or closed but, without a properly functioning lock to secure it, or if one or more windows is broken or not capable of being locked and secured from intrusion, or any combination of the same.
 5. **Owner:** An owner of the freehold of the premises or any lesser estate therein, a mortgagee, a vendee-in-possession, assignee of rents, receiver, executor, trustee, lessee, agent or any other person, firm or corporation that is directly or indirectly in control of a building subject to the provisions of this section.
 6. **Vacant:** A building or structure shall be deemed to be vacant if no person or persons actually, currently conducts a lawfully licensed business, or lawfully resides or lives in any part of the building as the legal or equitable owner(s) or tenant-occupant(s), or owner-occupants or tenant(s) on a permanent, non-transient basis.

3. **Applicability:** The requirements of this section shall be applicable to each owner of any building that is not a dwelling that shall have been vacant for more than 45 consecutive days and to each owner of residential property consisting of one or more vacant dwellings that shall have been vacant for more than 45 consecutive days. Each such owner shall cause to be filed a notarized registration statement, which shall include the street address and parcel number of each such vacant building, the names and addresses of all owners, as hereinafter described, and any other information deemed necessary by the Town Manager. The registration fee as required by this chapter section shall be billed by the Finance Department and shall be paid by January 1 of each year. For purposes of this section, the following shall also be applicable:

- (a) If the owner is a corporation, the registration statement shall provide the names and residence addresses of all officers and directors of the corporation and shall be accompanied by a copy of the most recent annual franchise tax report filed with the secretary of state;
- (b) If an estate, the name and business address of the executor of the estate;
- (c) If a trust, the name and address of all trustees, grantors, and beneficiaries;
- (d) If a partnership, the names and residence addresses of all partners with an interest of ten percent or greater;
- (e) If any other form of unincorporated association, the names and residence addresses of all principals with an interest of ten percent or greater;
- (f) If an individual person, the name and residence address of that individual person.

4. Registration statement and fees; local agent:

- (a) If none of the persons listed, as above, is shown at an address within the state, the registration statement also shall provide the name and address of a person who resides within the state and who is authorized to accept service of process on behalf of the owners and who shall be designated as a responsible, local party or agent, both for purposes of notification in the event of an emergency affecting the public health, safety or welfare and for purposes of service of any and all notices or registration statements as herein authorized and in connection herewith.
- (b) Registration shall be required for all vacant buildings, whether vacant and secure, vacant and open, or vacant and boarded, and shall be required whenever any building has remained vacant for 45 consecutive days or more. In no instance shall the registration of a vacant building and the payment of registration fees be construed to exonerate the owner, agent, or responsible party from responsibility for compliance with any other building code or housing code requirement. One registration statement may be filed to include all vacant buildings of the owner so registering. The owner of the vacant property as of November 15th of each calendar year shall be responsible for the payment of the non-refundable registration fee.

- (c) Said fee shall be billed by the Finance Department and based on the duration of the vacancy as determined by the following scale:

1. No fee for properties that are vacant for less than one year;
2. \$500.00 for properties that are vacant for at least one year but less than two years.
3. \$1,000.00 for properties that are vacant for at least two years but less than three years.
4. \$2,000.00 for properties that are vacant for at least three years but less than five years.
5. \$3,500.00 for properties that are vacant for at least five years but less than ten years, and
6. \$5,000.00 for properties that are vacant for at least ten years, plus an additional \$500.00 for each year in excess of ten years.

5. **Appeal Rights:** The owner shall have the right to appeal the imposition of the registration fees to the Town of Elsmere's Board of Adjustment.

6. **One Time Waiver of Registration Fee:**

- (a) A one-time waiver of the registration fee may be granted by the Town Manager based upon an application by the owner if the owner:
1. Demonstrates with satisfactory proof that he/she is in the process of demolition, rehabilitation, or other substantial repair of the vacant building; and
 2. Objectively demonstrates the anticipated length of time for the demolition, rehabilitation, or other substantial repair of the vacant building, or
 3. Provides satisfactory proof that he/she was actively attempting to sell or lease the property during the vacancy period.
- (b) Two Year Waiver. Upon application by the owner and satisfaction of subsection 6 (a) 1, 2, or 3 above, the Town Manager may grant a two year waiver of the registration fee if the owner meets the criteria for non-profit organizations as defined by Section 501(C) (3) of the Internal Revenue Code.

7. **Delinquent registration fees as a lien:** After the owner is given notice of the amount of the registration fee due, except for those owners that have properly perfected an appeal, and the owner fails to pay the amount due, said amount shall constitute a debt due and owing to the Town and the Town may commence a civil action to collect such the unpaid debt.
8. **Duty to amend registration statement:** If the status of the registration information changes during the course of any calendar year it is the responsibility of the owner, responsible party, or agent for same to contact the Code Enforcement Department in writing within 30 days of the occurrence of such change and make them aware of the information that has changed.
9. **Exceptions:** This section shall not apply to any building owned by the United States, the State of Delaware, New Castle County, or the Town.
10. **Violations & Penalties:** The failure or refusal for any reason of any owner, or agent of an owner acting on behalf of the owner, to register a vacant building or to pay any fees required to be paid pursuant to the provisions of this section, within 30 days after they become due, shall constitute a violation punishable by a fine in the amount of not less than \$100.00 nor more than \$500.00 for each failure or refusal to register, or for each failure or refusal to pay a required vacant building fee, as applicable. In such cases, whenever the minimum fine of \$100.00 is imposed, it shall not be subject to suspension or reduction for any reason.

July 8, 2010
First and Second Reading

August 12, 2010
Third and Final Reading

Deborah A. Norkavage, Mayor

Joann I. Personti, Secretary

Approved as to form:

Town Solicitor

SYNOPSIS

ORDINANCE 521

This Ordinance imposes registration requirements for vacant properties, with fees corresponding to the duration of the vacancy, along with a right to appeal the imposition of the fees and a one-time waiver of the fee for good cause.

Fiscal Impact: The fiscal impact of this ordinance is unknown at this time.